

Depot Maintenance PPP Direct Sales Agreements
—Examples of Terms and Conditions—

Part II—Most Commonly Included Topics

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The ordering of topics in the Table of Contents is an amalgam
of usage by various depots.

The terms and conditions presented in this Part have been extracted
from documents used by various depots.

The order of presentation of Examples within each topic is briefest ex-
ample to most complex.

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AUTHORITY AND PURPOSE

Example 1

This Commercial Services Agreement and Attachments/Schedules, collectively referred to as the “Agreement,” is by and between [insert name and address of Customer] (Customer), and the [insert name of Depot] (Depot). This Agreement is entered into per 10 USC § 2563. These terms and conditions govern the tasks to be performed.

Example 2

This Agreement is made this __ day of ____, between *Company* (hereinafter called “Buyer”), and *Depot* (or “Seller”), [insert address], pursuant to the authority of 10 United States Code (USC) §2474, Centers of Industrial and Technical Excellence (CITEs).

Buyer has requested the sale of supplies/services by *Depot* as identified in the statement of work (SOW), which is incorporated as Attachment __. *Depot* has agreed to furnish the same as described below. Buyer and Seller do now agree to the following terms and conditions that shall govern the conduct of the parties and the furnishing of such supplies/services. This document constitutes the entire agreement between the parties.

Example 3

This Direct Sales Contract is a combination fixed cost and cost reimbursable type contract and is hereby entered into by the above parties pursuant to the authority of 10 USC § 2474 to facilitate the purchase of production support services and facility use by *Company* from *Depot*; said services being generally described in Paragraph __ below, and more specifically described in the Facility Use Terms and Conditions and in the Statement of Work (SOW), Attachment __. In exchange for the mutual promises and other valuable consideration recited herein, *Company* and *Depot* do now therefore agree to and accept all terms and conditions contained herein or incorporated herein by reference. Such terms and conditions constitute the entire agreement between the parties and no changes to or other modifications of this contract shall be binding upon either party unless they are executed in accordance with the same formalities required of the original agreement, are signed by an authorized representative of each party, and are otherwise authorized by law.

Example 4

1. General. This Commercial Services Agreement (CSA) and Attachments/Schedules, collectively referred to as the “Agreement,” is by and between [insert name and address of Customer] (Customer) and [insert name of Depot] (Depot), and each may be individually or collectively referred to as Party or Parties. These terms and conditions govern the tasks to be performed.

2. Authority. This Agreement is entered into per 10 USC § 2474. These terms and conditions govern the tasks to be performed.

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3. Purpose. The purpose of this Agreement is to provide support to the [insert name or program] Performance Based Logistics (PBL) Program under a contract awarded by _____ to Customer. This Agreement sets out the responsibilities and resources required of each Party to accomplish the objectives of the [insert name or program] PBL. The Task Description Document (TDD) at Attachment __ sets out the work requirements and can be mutually expanded at a later date to cover: (1) additional tasks as awards occur from _____ to Customer under the _____ PBL Program contract; and/or (2) additional workload from other contracts; and/or (3) additional workload as the needs arise.

Example 5

1. Agreement. This *direct sales agreement*, hereinafter referred to as “Agreement,” is a public-private partnering arrangement between _____, a corporation organized and existing under the laws of the State of _____, (hereinafter referred to as the “Contractor”), and _____ (hereinafter referred to as the “Depot”), located at _____. The Contractor and the Depot may hereinafter be collectively referred to as “the Parties.”

2. Objective. The objective of the Agreement is to provide overarching responsibilities, performance commitments, and terms and conditions for the sales, while striving to reduce total operating costs (TOC). This partnership agreement represents the Parties’ commitment to the common goals of providing exceptional support to operational customers and best value to the U.S. Government, while complying with Public Law. The legal authority governing this public-private partnership arrangement is contained in 10 USC § 2474.

3. Organizational Relationship. Through this Agreement, the Contractor and the Depot have entered into a public-private partnering arrangement. The Depot, acting as a “Seller,” will provide to the Contractor, acting as a “Buyer,” DoD or Defense-related goods or services produced by the Depot, hereinafter referred to as “goods or services.” DoD or Defense-related work includes sales under foreign military sales (FMS) agreements, direct sales to friendly foreign countries, manufacture or repair of components or subcomponents within a larger Defense contract, work to support other authorized customers of the DoD wholesale supply system, joint DoD/commercial requirements (to the extent the commercial requirements do not impact DoD production), competitively awarded contracts in support of other Federal agencies as authorized by 10 USC § 2470, and work that advances the objectives of a Center of Industrial and Technical Excellence (CITE) in its core capabilities as authorized by 10 USC § 2474. The Contractor will provide a signed certification (Attachment __) covering all items hereunder meeting the definition of DoD or Defense-related goods or services above.

4. Non-Exclusivity of this Partnering Relationship. This Agreement will not be construed to be an exclusive relationship between the Depot and the Contractor. The Depot may establish partnerships with other parties for the provision of DoD or Defense-related goods or services. The Depot will protect the confidentiality of the Contractor’s correspondence and/or proposal strategy from disclosure to other parties that may establish similar type agreements with the Depot. All industry partners that may eventually enter into a partnership agreement with the Depot will receive equal referral considerations from the Government activities involved. The Agreement will not preclude the Depot’s ability, without consequence, to approach DoD buyers and

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program managers with alternative approaches that may be determined in the best interest of the Government. The Depot reserves the right of refusal to submit an offer in response to any request the Contractor may submit to the Depot under this Agreement.

5. Non-Interference. This Agreement will not interfere with the Depot's prime mission capability to support wartime requirements. In the event of national defense contingencies or other potential national emergencies, the Depot commander or higher authorities may determine the Depot's military mission, and/or any other work conducted at the Depot, requires deferral of the work contemplated hereunder. If said event occurs, the Depot will be provided schedule and cost relief from the consequences thereof.

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PERIOD OF AGREEMENT

Example 1

The period for this Agreement is from the date of its execution through [insert date].

Example 2

The period of this Agreement is from the date of the execution of the prime contract and for the duration of the prime contract between [insert government agency] and [insert private party], Contract Number [insert number], unless otherwise terminated pursuant to other provisions provided herein.

Example 3

Since the parties anticipate the possibility for additional work hereunder, the period of this contract shall be from date of award through _____ fiscal years thereafter, subject to written annual review and renewal, unless terminated sooner by either party. The first year for this contract shall be date of award through _____. Annual review and renewal should be completed by _____ and so on, unless otherwise agreed by the parties.

Example 4

The Parties agree that this Agreement will remain in effect until one of the following occurs: (a) the Agreement is terminated by bilateral agreement of the Parties; or (b) the aggregate value of all DSOs, including all adjustments to said DSOs performed pursuant to this Agreement reach an aggregate value not to exceed \$10,000,000. In the event the \$10,000,000 approval threshold is later amended, the Parties may amend the \$10,000,000 limitation to correspond to any new authority/delegation, pursuant to Article __, “Changes,” herein.

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CONSIDERATION (PRICE AND PAYMENT TERMS)

Example 1

(a) The Total Price for the supplies/services as described at Attachment __ is \$____. Buyer has ordered a firm quantity of services for ____ equipment @ \$____ each; total price is \$____. All orders for additional quantities shall be by written modification/task order to this contract prior to performance of any additional work. Prices for additional quantities are also subject to re-pricing.

(b) Prices are subject to fiscal year or annual review and adjustment by *Depot* throughout the term of the contract based on mandated government price adjustments, such as congressional wage increases, and based on other changed factors affecting costs.

(c) The buyer shall provide payment to *Depot* prior to the performance of any work. A check in the amount of \$____ for the initial firm quantity shall be sent to the address indicated below. However, if incremental payments are desired, buyer and seller shall agree on the amount of the first and all subsequent advance payments. All subsequent advance payment checks must be received prior to the expenditure of any on-hand incremental balance for work to proceed. Additional advance payment must be received prior to performance of any additional work/quantities. Failure to receive timely and sufficient advance payments will constitute an excusable delay. In accordance with ____ Command policy, payment must be received in advance to avoid a work stoppage. Checks shall be made payable to ____.

Example 2

1. General. This is a cost reimbursable Agreement. The terms of this section shall define the scope of "cost performance" as used in this Agreement. Amounts actually charged the Customer will be the direct and indirect costs reasonably and necessarily incurred in the performance of the work in accordance with Chapter 1, Volume 11A of the Department of Defense Financial Management Regulation, DoD 7000.14-R, and any applicable local instruction.

2. Funding. The total estimated cost for accomplishing the work is \$[insert amount]. The Customer shall fund the Agreement prior to commencement of performance. However, advance incremental funding is permitted in lieu of advance full funding. Should incremental funding be used, the Customer will provide advance incremental funding [insert amount(s)/or other measures/when due].

a) Work will not be performed without sufficient advanced funding. The *Depot* will provide the Customer a [insert frequency] summary of the status of charges and an accounting of funds. If additional funding is required, the *Depot* will notify the Customer of the additional funding required. Performance will be immediately discontinued when funds are exhausted upon the Customer's failure to provide required funds.

b) The Customer shall provide the *Depot* the additional funding upon such notification, or within such time as approved by the *Depot*.

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c) Upon conclusion of performance, the *Depot* will verify and, if necessary, reconcile the Customer's account. The *Depot* will refund any balance due on the Agreement to the Customer [insert "after" or "within 90 days after"] the expiration, termination, or completion of this Agreement. Nothing in this Agreement shall give the Customer the right to audit the *Depot's* books.

3. Method of Payment. Checks should be made payable to [insert appropriate name] and shall include the Agreement number. The checks shall be addressed to: [insert address].

Example 3

In consideration for the mutual promises contained herein by the parties and for the payment terms set forth below, *Company* does hereby agree to purchase and *Depot* does hereby agree to sell the services and facility use called for herein.

The parties understand and agree that the production support services of this contract will be provided by *Depot* on a cost reimbursable basis. The facility use portion of this contract will be a combination fixed price and reimbursable contract. *Company* agrees to pay *Depot* a fixed price for all facility-related services provided to *Company* under the facility use portion of this contract which are identified in the Facility Use Terms and Conditions of this contract as "fixed price." *Company* further agrees to pay *Depot* on a fully cost reimbursable basis all actual costs incurred by *Depot* for all facility-related services provided to *Company* under the facility use portion of this contract which have not been priced, but are identified in the Facility Use Terms and Conditions of this contract as being "non-recurring" and to be billed on an actual cost basis.

Depot warrants that each price for the services sold to *Company* under this Agreement is priced in accordance with the Department of Defense Financial Management Regulation, DoD 7000.14-R and DFAS Regulation 37-1 and that *Depot* is performing this work on a non-profit basis. *Company* understands and agrees that under the authority of 10 USC § 2474 and the terms of this contractual agreement that *Company* will provide advanced incremental payments to the *Depot*, and that no work will be performed by *Depot* for which funding has not been received in advance from *Company*. *Company* further understands and agrees that *Depot* cannot incur costs in excess of the estimated amount shown immediately below without notice to *Company* and without further payment by *Company* of sufficient funds to cover the additional estimated costs. *Company* also understands and agrees that *Depot* cannot lawfully spend U.S. Appropriated Funds in the performance of this contract and, consequently, when *Company's* funds are completely expended, *Depot* will cease performance of the service and will not initiate further service towards the completion until additional funds are received from *Company*. *Depot* agrees to notify *Company* when eighty percent (80%) of the *Company* provided funds have been expended. *Depot* shall incur and be responsible for all costs of preparing proposals.

The *Depot's* estimated pricing of these services follows.

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FY__ Estimated Cost.

Type of Service	Type of Reimbursement	Estimated Cost	# of Vehicles
Production Support	Reimbursable	\$ _____	_____
Facility Use (Recurring)	Fixed Cost	\$ _____	_____
Facility Use (Non-recurring)	Reimbursable	\$ _____	N/A
		(Actual Cost if provided)	
Total FY__ Estimated Reimbursement		\$ _____	

Total estimated cost is \$_____ FY__ contract dollars. All anticipated reimbursable costs for production support and facility usage have been estimated in the dollars above. Any actual charges over the estimate will require additional funding by *Company* to *Depot*. Likewise, any actual charges under the estimate will require reimbursement of funding from *Depot* to *Company*. Any unanticipated costs for emergency support will be billed to *Company* when service is complete with payment due 45 calendar days from billing date. Advance funding to cover the actual accrued costs of such emergencies or to cover any increases in the estimated costs due to other changes is subtracted from the contract advance funding received from *Company*. When payment for actual cost increases is received from *Company*, *Depot* will reimburse the advance funding account. Non-emergency support will be separately funded prior to services being provided. An analysis of estimated costs and actual costs will be performed during fiscal year end program close out.

Payment Schedule. *Company* shall make advanced payments to the *Depot* in accordance with the schedule below:

\$ _____ advanced payment prior to contract start date

\$ _____ due on or before 1 November 20__

\$ _____ due on or before 1 February 20__

All payments to *Depot* will be by company check, in U.S. Dollars, payable to the Treasurer of the United States. Remittance will be to _____. *Company* will annotate the contract number on the check and will notify the Contract Administrator via email when checks have been issued. The U.S. Government and *Depot* agree to refund any funds received hereunder, which prove to be in excess of the final total cost of this contract. *Depot* agrees to provide a certified statement of total cost upon completion of the work under this scope of work.

Any work hours outside the *Depot* normal business hours are considered overtime. *Company* will be required to reimburse *Depot* for overtime hours worked in support of *Company* or its contractors or subcontractors. Overtime requirements for reimbursable work will be over and above the estimated pricing herein and will be mutually agreed upon by both parties and coordinated prior to commencement.

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Example 4

1. General. This is a cost reimbursable Agreement. Amounts actually charged Customer will be the direct and indirect costs reasonably and necessarily incurred in the performance of the work in accordance with Chapter 1, Volume 11A of the Department of Defense Financial Management Regulation, DoD 7000.14-R, and any applicable local instruction.

2. Rate Adjustments. While this Agreement is entered into on a cost reimbursable basis, the Parties recognize that rates may fluctuate due to outside influences beyond *Depot's* control. Prices are based on approved stabilized rates developed by the *Service* Working Capital Fund Budget process to ensure recovery of full costs. *Depot* agrees to provide its current FY rates to establish a baseline, and to further provide rates for each subsequent fiscal year of this Agreement as they become final.

3. Advance Incremental Funding. Customer will fund the Agreement prior to commencement of performance. Advance incremental funding is permitted in lieu of advance full funding; however, should incremental funding be used, Customer will provide advance incremental funding [insert amount(s)/or other measures/when due].

4. Advance Funding. Work will not be performed without sufficient advance funding. *Depot* will notify Customer when eighty percent (80%) of incremental funding has been expended. If additional funding is required, *Depot* will notify Customer of the additional funding required. Customer's failure to provide additional funding, as required, will result in the discontinuance of performance immediately upon the exhaustion of funds. Customer will provide *Depot* the additional funding upon such notification, or within such time as approved by *Depot*.

5. Reporting. *Depot* will provide Customer a [insert frequency] summary of the status of charges and an accounting of funds.

6. Reconciling Customer's Account. Upon conclusion of performance, *Depot* will verify and, if necessary, reconcile Customer's account. *Depot* will refund to Customer any balance due on the Agreement upon expiration, termination, or completion of this Agreement.

7. Cost of Materials. Except as provided in the TDD, Customer will provide all materials required to repair an Asset. To the extent that *Depot* must provide materials to accomplish required repairs, Customer will reimburse *Depot* for the costs of those materials, including material handling costs, when those costs are clearly excluded from the yearly fixed stabilized rate, where applicable.

8. Reimbursement for *Depot* Business Operations Management and Expenses. Customer will fund *Depot* Business Operations Management and all program-related travel. A separate Purchase Order (PO) line item will be established for each of these expenses.

9. No Audit Rights. Nothing in this Agreement will give Customer the right to audit *Depot's* books.

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CUSTOMER FURNISHED PROPERTY

Example 1

If Buyer furnishes property to Seller for use in performance of this Agreement, the Parties will identify the property in an Attachment to this Agreement. The property will be delivered and retrieved at the Buyer's expense. The property shall be in a condition suitable for the intended use by the Seller.

If Buyer furnishes material to Seller for use in performance of this Agreement, the material shall be suitable for the intended use by the Seller.

Example 2

1. Customer Property. If Customer furnishes property to *Depot* for use in the performance of this Agreement, it will be identified in an attachment to this Agreement. The attachment will identify the property, quantity, and schedule for delivery. The property will be provided and retrieved at Customer's expense.

2. Condition of Property. In the event the property is not provided to *Depot* in a useable condition allowing performance under this Agreement, Customer may retrieve the property after coordinating with *Depot*. Customer will be responsible for any costs incurred to remedy the situation, to include replacing the property.

3. Responsibility for Property. *Depot* will not be responsible for loss or destruction of, or damage to, Customer property provided under this Agreement, or for expenses incidental to such loss, destruction, or damage, except for those that result from willful misconduct or gross negligence on the part of *Depot* personnel.

4. Storage of Property. Storage of Customer property that is not in a useable condition must be mutually agreed to and the designated, authorized representatives will sign a written agreement setting out storage terms.

Example 3

1. Contractor-Owned Property. The Contractor may provide Contractor-owned property to the Depot, including but not limited to direct and indirect material, tools, patterns, and equipment as necessary for the Depot to perform the specific workload requirements under this Agreement. This Agreement establishes accountability requirements for Contractor-owned property that has been or may be placed in the Depot's possession and/or control for the exclusive purposes described herein. The Depot agrees not to use Contractor-owned property, nor the designs, drawings, specifications, or other information received herein for any other purposes without prior written consent by the authorized Contractor's representative. Title to the subject property does not transfer as a result of change in possession. Contractor-owned material or replacement material will be returned in the form of products (except that which becomes normal scrap or indus-

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trial waste) or unused material. The property shall not be transferred, destroyed, modified, or otherwise disposed of without prior written authorization from the Contractor's representative.

2. Depot Inspection and Loss, Damage or Destruction (LDD) Report. The Depot shall inspect any such material furnished by the Contractor and shall have the right to reject nonconforming material upon inspection. Nonconforming materials accepted by the Depot shall not excuse performance in strict accordance with the applicable specifications, unless such nonconformance could not be discovered by a reasonable inspection. The Depot agrees to promptly report, in writing, all incidents of loss, damage or destruction of the subject property to the Contractor's Representative. The Loss, Damage or Destruction (LDD) report shall contain the following incident data:

- Document number under which the property is accountable
- Property identification number and description of property, (e.g., part number, serial number, tool number, etc.)
- Acquisition cost of the property (if known)
- Date, time, and location of incident/discovery
- Known interests in and commingled property of which the LDD is/was a part
- Insurance, if any, covering the property or any commingled property
- Estimated scrap proceeds (when applicable)
- Actions to prevent recurrence or repetition of similar incidents

3. Property Accountability. The Depot agrees to maintain appropriate ownership identity of the subject property, maintain accountability records, and periodically report inventory of subject property in accordance with sound business practices. The Depot agrees to immediately notify the Contractor's representative and request disposition instructions when the subject property will no longer be required. During the period of performance, the Depot will keep all property furnished by the Contractor, and all Government property (as may be identified elsewhere herein) for which the Contractor is accountable, segregated and clearly marked, and will maintain a complete inventory thereof in accordance with the Depot's approved property management system in effect at the time. Except for property incorporated into delivered end products, the Depot will, upon termination or completion of this work effort, deliver property, as directed by the Contractor, in good condition, subject to ordinary wear and tear and normal manufacturing losses.

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QUALITY ASSURANCE

Example 1

The *Depot* will provide internal quality assurance and inspection services for all work performed at *Depot*. In addition, all services are subject to inspection by *Company* and its customer prior to final acceptance or rejection. Such inspection will be at *Company's* expense. Any unique test equipment required for final acceptance and system integration will be provided by *Company* if not currently in use or possessed by *Depot*. To the extent practicable and at reasonable times, including the performance times when such services are being accomplished, *Company* and its customer may inspect and/or test the services furnished at the locations where the work is being performed. *Depot* shall provide reasonable facilities and assistance to ensure such inspection/testing is accomplished in a safe and convenient manner. *Company* further agrees and understands that *Depot* is a restricted military installation and that its ability to inspect and test at *Depot's* facility at all reasonable times is contingent upon *Depot's* rules and regulations regarding access. All inspections and tests shall be conducted in such a manner as to not unduly delay the work. *Company* and its customer may inspect 100% or a sample of all services furnished by *Depot*, at *Company's* and its customer's option; and *Company* shall have the right to reject or require correction of all or any portion of the services if such inspection reveals them to be non-conforming to the specifications contained in this contract. Services are considered to be non-conforming when they fail to satisfy the specific requirements specified in this contract, or any document incorporated by reference therein, or are otherwise not in conformity with the specifications.

Example 2

1. Depot Maintenance Quality Standards. The Depot will provide and maintain a Quality Assurance (QA) System that meets the intent of the American National Standards Institute/American Society for Quality Control (ANSI/ASQC) Q9002. The Depot will provide quality oversight of work in accordance with Air Force Materiel Command Instruction (AFMCI) 21-115, "Depot Maintenance Quality Assurance." The Contractor hereby agrees that performance of Quality Assurance in accordance with the requirements of AFMCI 21-115 and other applicable Depot documentation meets the intent of performance in accordance with the requirements of ANSI/ASQC Q9002.

2. Software Maintenance. The Depot adheres to the Software Engineering Institute's (SEI) Capability Maturity Model (CMM) for software maintenance. An integral component of this model includes software quality assurance. The SEI CMM is the DoD-mandated standard model to be used in assessing the maturity of an organization's software processes, testing processes, quality assurance processes, configuration management processes, etc.

a) The Depot will follow its developed quality assurance processes, which strictly follow the Quality Assurance requirements of the CMM.

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b) The Depot will conduct periodic software project audits and will provide the Contractor, upon request, the audit schedule and the opportunity to participate in such audits. The Contractor will have access to only those audits applicable to workload covered under this Agreement.

Example 3

1. Quality Audits/Quality Assurance Programs. Customer and *Depot* will administer their own internal quality audit and quality investigation programs to objectively assess those factors influencing product quality. Customer and *Depot*, upon request and mutual agreement of both Parties, may conduct joint quality related visits. Quality issues that may warrant the performance of a quality audit will be identified and resolved through open communications between the two parties rather than through a formal audit process. Customer recognizes *Depot* as an approved supplier of material without audit or survey.

2. Assets. *Depot* will review Assets with possible workmanship deficiencies using the Quality Deficiency Report (QDR) process of OPNAVINST 4790.2(G) (or latest revision), Naval Aviation Maintenance Program, Volume II, Section 3.1.3, and the overall QDR policy set forth in SECNAVINST 4855.5A (or latest revision).

3. Quality Deficiency Reports (QDR). QDRs will be used to report deficiencies in newly reworked Assets, which may indicate nonconformance with specification requirements or standard workmanship. In order to be a qualifying deficiency, failures must have occurred at zero operating time, during initial installation, operation, test, check, turn-up, or first flight. Discrepancies discovered after initial use (as identified in the previous sentence) do not qualify for QDR reporting. A reworked Asset is defined as an Asset overhauled, rebuilt, repaired, or modified by a government or commercial activity, but unproven in actual operation.

4. Repair/Rework. In the event that a qualifying deficiency (as defined in paragraph 3. above) is found and *Depot* determines it is due to its workmanship, *Depot* will not assess Customer labor or material charges to rework the QDR Asset. Customer will make material, required for the rework of the QDR Asset, available to *Depot* for its purchase.

5. Non-Warranty. This provision is not to be construed as a Warranty.

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PUBLICITY AND NEWS RELEASES

Example 1

Neither Buyer nor Seller shall issue any news or press release, including photographs and films, advertisement or public announcement regarding this Agreement without prior review and written approval of the other Party.

Example 2

No news release, photographs and films, advertisements, public announcements, or any other media regarding this Agreement or denial or confirmation of same shall be made without prior written approval of the *Depot* Public Affairs Office.

Example 3

Any formal news release, public announcement, advertisement, or publicity to be released by either Party concerning this Agreement, any proposal, any resultant contract, or any subsidiary document/process hereunder, will be promptly forwarded to the other Party for concurrence prior to release.

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INFORMATION HANDLING

Example 1

Non-Disclosure Agreement. If access to nonpublic information is required, the Contractor and each Contractor employee working on *Depot* shall sign a non-disclosure statement on their company's letterhead prior to commencing work under the contract or obtaining the badges required by Paragraph __ above. There will be one non-disclosure statement for each employee. The non-disclosure statement shall be worded as stated in ____.

Before any non-government employee can be given access to nonpublic information covered by the non-disclosure agreement, there must be a written agreement between the recipient Contractor and the owner of the proprietary information. A copy of this agreement must be made a part of the contract file.

Example 2

1. Proprietary and Competition Sensitive Information. The Nondisclosure Agreement (NDA) executed by the Buyer and Seller and incorporated by reference in this Agreement, defines the requirement and obligations of the Parties for the protection of proprietary and/or competition sensitive information.

2. Classified Information. Information security of classified information shall be handled in accordance with current applicable information security program instructions and regulations for safeguarding such articles or information against unauthorized disclosure.

Example 3

1. Notice. With respect to information security, each party shall provide notice of any special information handling (classified, Competition Sensitive, Proprietary, etc.) associated with the work under this Agreement. If no notice is provided, it will be assumed that no restrictions are required.

2. Classified Information. Unless otherwise stipulated in this Agreement, if the product or related information is classified, it will be handled per the applicable instructions (e.g., DoD 5220.22-M, National Industrial Security Program Operating Manual; DoD 5520.22-R, Industrial Security Regulation; SECNAVINST 5510.30A, Department Of Navy (DON) Personnel Security Program Regulation; SECNAVINST 5510.36, DON Information Security Program (ISP); and, Regulation (Government) DD Form 4401 of the DoD Industrial Security Program Operating Manual (or latest revisions)) for safeguarding such products or information against unauthorized disclosure.

3. Competition Sensitive/Proprietary Information. Unless otherwise required by law or stipulated in this Agreement, the parties to this Agreement who receive Competition Sensitive/Proprietary Information belonging to the other party shall hold such information in strict confidence; shall limit its further disclosure to personnel having a need for access to the informa-

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tion; and shall use the Competition Sensitive/Proprietary Information only for performance under this Agreement. The parties further agree to make a good faith effort to otherwise minimize, to the extent practicable, the number of persons having access to Competition Sensitive/Proprietary Information. Competition Sensitive/Proprietary Information shall receive security protection in accordance with the receiving party's standard procedures governing the handling of such information, unless otherwise agreed to by the parties.

4. Disposal/Return. Upon completion or termination of the Agreement, each party shall return or properly dispose of all classified, Competition Sensitive/Proprietary Information or agree to other disposition comporting with applicable laws. Classified materials must be disposed of in accordance with federal law and regulation.

Example 4

A. Confidential, Proprietary and Trade Secret Information and Materials

1. Depot Use and Disclosure. The Depot shall:

a) Safeguard and protect from unauthorized use and disclosure all:

- confidential, proprietary, and/or trade secret information;
- tangible items containing, conveying or embodying such information;
- tooling identified as subject to this article and obtained, directly or indirectly, from the Contractor in connection with this Agreement or other agreement referencing this Agreement;

collectively referred to as "Proprietary Information and Materials".

b) Use the Contractor's Proprietary Information and Materials only in the performance of and for the purpose of this Agreement and/or any subordinate documents issued hereunder. The Depot may disclose the Contractor's Proprietary Information and Materials to Depot vendors or suppliers only as required for the performance of this Agreement, provided each such vendor or supplier first agrees, in writing, to the same obligations imposed upon the Depot under this article. The non-disclosure agreements at DFARS 252.227-7025 and DFARS 227.7103-7(c) each satisfy this requirement. The restrictions on Depot disclosure or use of Proprietary Information and Materials shall apply to all materials derived by the Depot or others from the Contractor's Proprietary Information and Materials.

2. Contractor Use & Disclosure. The Contractor shall safeguard and shall not release or disclose to any person, other than the Depot Contracting Officer or his/her authorized representative, any information or materials which the Depot has identified with a restrictive legend as "Confidential Commercial Information." However, despite any other obligations or restrictions imposed by this paragraph, the Contractor shall have the right to use, disclose, and reproduce information or materials marked by the Depot as "Confidential Commercial Information" and make derivative works thereof, only for the purposes of testing, certification, use, sale or support of any product delivered under this Agreement and/or any other subordinate documents issued

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pursuant to this Agreement. Any such use, disclosure, reproduction or derivative work by the Contractor shall, whenever appropriate, include a restrictive legend suitable to the particular circumstances. In the event the Depot delivers any information or materials received with restrictions on use, pursuant to FAR or its Supplements, the Contractor and any subcontractors to which it discloses the information or material, will execute a use and non-disclosure agreement identifying the information or materials utilizing substantially the same language as described at DFARS 227.7103-7(c).

3. Notification of Loss or Inadvertent Disclosure. Each Party agrees to promptly notify the other Party of the loss or inadvertent disclosure of any Proprietary Information and Materials or Confidential Commercial Information. Neither Party shall be liable for the inadvertent disclosure of such information to a third party if it is disclosed despite the exercise of the same degree of care the receiving Party utilizes to safeguard its own similar information, and in any event not less than reasonable care; provided the Party who inadvertently disclosed the information promptly notifies the furnishing Party, takes all reasonable steps to retrieve the inadvertently disclosed information, immediately takes steps to preclude further disclosure, and assists the furnishing Party in taking such steps. However, such inadvertent disclosure does not relieve either Party from its continued adherence to this article.

4. Disposition. Upon the disclosing Party's request, at any time and in any event, upon the completion, termination, or cancellation of this Agreement, the receiving Party shall stop using all Proprietary Information and Materials and/or Confidential Commercial Information and shall return or destroy all such information, and all materials derived therefrom, including copies made by the receiving Party, unless specifically directed otherwise in writing by the originating Party. Upon request, the receiving Party shall send the originating Party a destruction certificate. Notwithstanding the other provisions of this paragraph, each Party may make and retain one copy of such Proprietary Information and Materials and/or Confidential Commercial Information, for archival purposes only. The provisions of this article shall survive the performance, completion, termination or cancellation of this Agreement.

5. Exceptions. The obligations to protect Proprietary Information and Materials and Confidential Commercial Information, and the Parties' liabilities for unauthorized disclosure or use of such information and materials, do not apply with respect to such information which:

- a) Is lawfully published or otherwise lawfully exists in the public domain at the time of disclosure; or
- b) Is lawfully known to the receiving Party, without restriction as to further disclosure, prior to disclosure by the receiving Party; or
- c) Is disclosed with the prior written approval of the other Party; or
- d) Is independently developed by the receiving Party without use, directly or indirectly, of such Proprietary Information and Materials; or
- e) Is lawfully known or available to the receiving Party for use without restriction from a third party; or

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f) Becomes part of the public domain without improper means, or without breach of this Agreement by the receiving Party; or

g) Is disclosed as required by judicial action after all available legal remedies to maintain the Proprietary Information and Materials in secret have been exhausted; provided that advance notice of such judicial action was timely given to the disclosing Party so that the disclosing Party had an opportunity to seek a protective order or other remedy, or to waive compliance with the provisions of this Agreement; and provided further, that the compelled Party furnished only that portion of the information that is legally required, provides the disclosing Party and its counsel an opportunity to review and approve the contents of the disclosure, and exercises substantial efforts to obtain reliable assurance that confidential treatment will be afforded the Proprietary Information.

6. Ownership, Rights, and Liability. All Proprietary Information and Materials furnished hereunder shall remain the property of the originating Party. Neither this Agreement nor the disclosure of proprietary information hereunder, shall be construed as granting any other right or license under any invention, patent, mask work, trademark, or copyright now or hereafter owned or controlled by either Party, nor shall any such disclosure constitute any representation, warranty, assurance, guaranty or inducement concerning the infringement of any patent or other rights of others. No warranty of accuracy or completeness of any Proprietary or Confidential Commercial Information is provided herein. The furnishing Party shall not be liable for damages arising from the receiving Party's use of or reliance on the information disclosed hereunder.

B. Classified Information

To the extent the obligations of the Parties hereunder involve access to security information, classified U.S. Government "Confidential" or higher, the provisions of applicable Government regulations and the Program Security Classification Guide attached to this Agreement shall apply.

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INTELLECTUAL PROPERTY

Example 1

Only the inventing or developing party shall have rights to any invention made in the course of or under this Agreement, to any patent resulting from such invention, or to any data developed, produced, generated, created, or delivered under this Agreement. No rights shall construe to the other Party. Each Party grants permission to the other Party to use any such invention and/or data for purposes of satisfying its contractual obligations under this Agreement and for no other purpose.

Example 2

The Parties agree that FAR 52.227-11, "PATENT RIGHTS -- RETENTION BY THE CONTRACTOR (SHORT FORM) (JUN 1997); DFARS 252.227-7013, "RIGHTS IN TECHNICAL DATA -- NON-COMMERCIAL ITEMS (NOV 1995); and, DFARS 252.227-7014, "RIGHTS IN NON-COMMERCIAL COMPUTER SOFTWARE AND NON-COMMERCIAL COMPUTER SOFTWARE DOCUMENTATION (JUN 1995)" are incorporated by reference into this Agreement. "Contractor" in the above-identified clauses shall mean the *Depot*. The Parties agree that the Customer shall acquire no rights to any invention made in the course of or under this Agreement, to any patent resulting from such invention, or to any data developed, produced, generated, created, or delivered under this Agreement by the *Depot*. The Customer is granted permission to use any such invention and data for purposes of satisfying its contractual obligations under this Agreement and for no other purpose whatsoever. This provision may be further explained by an attachment to this Agreement.

Example 3

The Contractor has agreed the Depot may create for the Contractor software programs including (without limitation) programming, corrections, enhancements, improvements, translations, updates or upgrades, and any other derivative work or collective work created for or delivered to the Contractor under this Agreement (i.e. Work Product). To the extent the U.S. Government owns or has any rights in any works or intellectual property rights that are used, embodied or reflected in the Work Product, the Depot hereby grants to the Contractor, its successors and assigns, an irrevocable, perpetual, nonexclusive, worldwide, royalty-free license to use, execute, reproduce, display, and perform the Work Product, to prepare derivative or collective works based upon or containing the Work Product, to distribute the Work Product (including any derivative or collective works prepared pursuant to such authorization), and to authorize others to do any or all of the foregoing. Such license granted to the Contractor shall include a license to copy and display all pictorial, graphic or audiovisual works created as a result of execution of the Work Product, even if such pictorial, graphic or audiovisual works are created by or with other programming or through other means. The Depot agrees, at the request of the Contractor, and at the Contractor's expense, to perform any acts and execute any further assignments or acknowledgments that the Contractor may reasonably deem necessary. In the event the Parties agree that the Depot will perform other work, which will result in the development, creation, or modifica-

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tion of intellectual property, the Parties agree to enter into an appropriate agreement or modify this Agreement to address their rights and duties with respect to such intellectual property.

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ASSIGNMENT

Example 1

Any assignment of this contract by Buyer or *Depot* without the prior written consent of the other party will be void.

Example 2

The Contractor may, upon notice to the Depot, assign this Agreement to any person, firm, or corporation with which the Contractor may merge or consolidate or to which the Contractor may assign substantially all of its assets. The Contractor shall furnish the Depot Contracting Officer two (2) signed copies of any such assignment.

Example 3

The rights of the Parties under this Agreement may not be assigned or transferred to any person, firm, or corporation without the express, prior written consent of the other Party, which consent will not be unreasonably withheld, except that:

(1) The Customer may assign this Agreement in connection with a sale or transfer of the business to which this Agreement relates or to a corporate parent, subsidiary, or affiliate; and,

(2) The *Depot* may assign this Agreement to another capable, authorized United States Government agency or activity.

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CHANGES

Example 1

(a) Any additional or changed work efforts will be incorporated into this contract by written modification prior to the performance of any changed or additional work.

(b) *Depot* will provide Buyer with the option to buy additional supplies/services. Estimates for any additional work will be provided upon request. Any additional supplies/services that the Buyer may require must be established by written modification/task order to this contract prior to the performance of any work.

Example 2

1. Mutual Written Agreement. The Parties must mutually agree by written amendment to this Agreement upon any changes to this Agreement. If any change to the work to be performed under this Agreement affects *Depot's* costs or the time required to perform the work, the estimated cost and schedule will change accordingly. No oral statements may modify or otherwise affect the terms of this Agreement.

2. Authorized Representatives. Customer's authorized representative, acting on behalf of Customer, and the Commanding Officer of *Depot*, acting on behalf of *Depot*, are the only persons authorized to approve changes to the terms of this Agreement. Any change of authorized representatives or alternates will be effective upon receipt of official written notification.

Example 3

(a) During the performance of this contract *Company* and/or *Depot* may require additions, alterations, deductions, deviations, and etc. (all hereinafter referred to as changes) to drawings, designs, specifications, schedules and/or deliveries. No change will be considered without written notice from either party. All changes to this contract will be mutually agreed to and signed by an authorized representative of each party.

All changes, to include drawings, will be submitted to the *Depot* Contract Specialist. The *Depot* may implement a change to contract scope of work prior to formal contract modification as agreed to, in writing, by both parties. For any change that *Company* projects to be \$25,000 or less, the *Depot* and *Company* Program Managers or authorized representatives will sign a bilateral agreement in a format agreeable to both parties. For any change that *Company* projects will be in excess of \$25,000, *Company* will submit to *Depot* Director of Contracting a letter authorizing the work and agreeing to reimburse all actual costs incurred as a result of the change. The letter of authorization must be signed by a representative of *Company's* Subcontracts Office and *Depot's* Director of Contracting or authorized representative prior to beginning any additional work.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, *Com-*

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pany shall make an equitable adjustment in the contract price, the delivery schedule, or both, and the contract shall be modified accordingly.

(c) The *Depot* shall assert its right to the equitable adjustment within 90 days after the date of receipt of the written notice; provided, that if the *Depot* has good and sufficient reasons it may assert its claims resulting from such changes at anytime before the completion of this contract.

(d) If the *Depot's* proposal includes the cost of property made obsolete or excess by the change, *Company* shall have the right to prescribe the manner of the disposition of the property, consistent with any rights the Government may otherwise have in the property or restrictions the Government may have otherwise placed on such property.

(e) During performance of the work specified in this contract, *Depot* shall not initiate any changes to the services contracted for herein and furnished to *Company* under the contract without first providing advance written notification to and obtaining written approval from *Company*. The above requirement applies whether or not there is a cost impact associated with the change and regardless of the type of change involved, including service improvements.

Example 4

1. Customer-Directed Changes. In the event the Customer requires a change in this Agreement or an IA as a result of a change in law or policy, or directs a change to the Prime Contract which requires a change to this Agreement or an IA, the Parties agree to: (a) promptly inform each other of any such change; (b) consult with each other concerning potential impacts on the Depot workload; and (c) enter into good faith negotiations for a bilateral modification to implement the change.

2. Right to Make Changes. The Contractor may, at any time but only in writing and signed by its authorized purchasing agent, make changes within the general scope of the subsequent IA(s), which affect the following:

a) Supplies

- Drawings, designs, specifications, statement of work, technical requirements or descriptions
- Method of shipment, packaging, or packing
- Place of inspection, delivery or acceptance
- Adjustments to quantities
- Adjustment to delivery schedule(s)
- Amount of Contractor furnished property

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b) Services

- Description of services to be performed
- Time of performance (e.g. hours of the day, days of the week)
- Place of performance

3. Equitable Adjustments. For changes that result in an increase or decrease in the cost/prices or delivery/performance schedule, the Parties will negotiate an equitable adjustment to either the cost/prices or delivery/performance schedule, or both. The equitable adjustment will be executed by a bilateral modification. When submitting a claim for equitable adjustment, the cognizant Depot partnering representative will provide written notification to the Contractor, no later than thirty (30) days from receipt of the directed change. The Contractor may, at its sole discretion, consider any such claim regardless of when asserted.

4. Proposal. The cognizant Depot partnering representative will submit an equitable adjustment proposal within sixty (60) days from Depot receipt of the directed change. However, in the event that the Contractor submits a request for proposal prior to implementing the proposed change, the Depot partnering representative will respond to said request within ten (10) business days or as otherwise agreed to by the Parties. The proposal will include pertinent factual information/rationale, fully account for all cost increases/decreases, and address any adjustment(s) to schedule.

5. Failure to Agree. If the Parties are unable to agree to a mutually acceptable change to this Agreement and/or an impacted IA, such failure to agree shall be resolved under the Article __, “Resolution of Disputes and Disagreements,” herein.

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DISPUTES RESOLUTION

Example 1

If the parties are in dispute as to the application or interpretation of any term or clause of this Agreement or any modification issued against it, or if any party shall have a claim against the other, that party shall so notify the other in writing. The parties shall first attempt to resolve the dispute or claim at the level of the duly authorized representatives for each party. The duly authorized representative for the Government for disputes or claims filed hereunder shall be the assigned contracting officer. If the dispute cannot be resolved at that level, it shall be submitted to a senior official within ____ Command and a similarly situated official for *Company*. If the parties are unable to resolve the dispute or claim, then each party shall have the right to pursue such alternative legal action as may be available to them under federal law and regulation.

Example 2

Buyer and Seller agree that the following Alternate Dispute Resolution process shall be the sole and exclusive methodology for resolving disputes. Any dispute arising out of or under this Agreement, which is not resolved by the Project Managers, shall be mutually decided by the [office title of person reporting to the Commander], for *Depot*, and a comparable level corporate executive for the Buyer. That decision shall be reduced to writing and shall be final unless a Party elevates the dispute to the Reviewing Officials within 14 calendar days from receipt. The Reviewing Officials shall be the Commanding Officer of *Depot*, and a comparable level corporate executive for the Buyer. The Reviewing Officials shall review the record to determine whether the initial decision was reasonable, discuss the dispute, and reach agreement. The decision of the Reviewing Officials shall be final.

Example 3

1. Dispute Process. Any dispute arising under the Agreement, which is not disposed of by agreement of the parties, shall be decided by the [insert appropriate *Depot* official] on behalf of the *Depot* who shall reduce the decision to writing and shall furnish a copy to [insert Customer name]. The decision shall be final unless, within 15 calendar days from the date of receipt of the decision, the Customer furnishes [insert CO/XO, Commander/Vice-Commander or higher officials as appropriate] with a request for reconsideration. The reviewing official will review the record to determine whether the initial decision was reasonable. The Customer shall be afforded an opportunity to submit additional supporting documentation and rationale. The decision of the reviewing official shall be final.

2. Claims. Any claim related to this Agreement must be noticed to the [insert appropriate *Depot* official] within 30 days of the day it is or reasonably should have been discovered. Notice may be in any written form. A letter stating the claim must then be submitted to the *Depot* within 30 days after the date of notice. Claims must specifically describe the nature of the issue and, if for money, must state a sum certain. The *Depot's* total liability under this Agreement is \$[insert amount].

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Example 4

1. Governing Law. The rights of the Parties are defined by the terms and conditions of this Agreement and associated DSO/IA and the body of Federal Contract case law, without any recourse to, or consideration of, any of its conflicts of laws/provisions.

2. Disputes Prevention. Both the Parties are committed to a disputes-prevention atmosphere during the performance of this Agreement and associated DSOs. The Parties agree their best efforts will be made to settle all controversies through direct negotiations at the lowest practical level. If negotiations reach an impasse, the Parties agree to use, to the maximum extent feasible, one or more Alternative Dispute Resolution (ADR) processes to reduce or eliminate the need for litigation. The Parties further agree that any ADR process must be structured to allow sufficient time to exchange and analyze any information necessary to obtain and justify a settlement.

a) In cases where the Parties decide to use ADR, the Parties will prepare a specific, written ADR agreement appropriate to the controversy, prior to beginning the ADR process. The agreement should normally address the following (as appropriate): authorized representatives for each Party; ADR techniques/processes to be utilized and procedures to be followed; methods for the exchange of information; a schedule and procedures for any discovery proceedings, including how to limit discovery/factual exchange; appointment and payment to neutrals; whether and to what extent to stay or suspend any pending litigation; possible audit requirements; confidentiality and at what point the Parties will begin negotiations; and a provision for termination of the agreement.

b) If the Depot rejects the Contractor's request to use ADR proceedings, the Depot shall provide the Contractor a written explanation citing one or more of the conditions in 5 USC § 572(b) or other specific reasons that ADR procedures are inappropriate for resolution of the dispute. [See 41 USC § 605(e) for ADR guidance.] In any case where the Contractor rejects the Depot's request to use ADR proceedings, the Contractor shall inform the Depot, in writing, of the Contractor's specific reasons for rejecting the request.

c) In the event neither Party believes a particular issue is suited to ADR, or is dissatisfied with the progress being made in a particular ADR proceeding, that Party may, after good faith efforts to resolve the issue, elect to abandon the ADR process and proceed as otherwise provided under this Agreement and associated DSOs, regulation, or statute. Nothing in this article shall be deemed to prevent either Party from preserving and exercising its legal rights and remedies during the ADR process.

3. Judicial Review. The Parties, after exhausting the administrative remedies specified in the subparagraph above, may pursue any remedy that is available under law in a court of competent jurisdiction.

4. Pending Resolution of Dispute. The Depot shall proceed with performance of a DSO according to the Contractor's direction. The Contractor agrees to adjust the DSO payment schedule(s) in those cases where the Depot requires a payment in advance of work continuation. The Contractor recognizes it may be necessary to execute such adjustment prior to the Parties' dispute settlement. A bilateral modification to the DSO shall be executed to effect such payment

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schedule adjustment(s). In the event the dispute is resolved in the Contractor's favor, the advance payment shall be returned, consistent with the resolution decision or judgment.

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TERMINATION

Example 1

Depot reserves the right to cancel or suspend performance under this contract for unusual and compelling circumstances, when the national interest of the United States so requires. _____ shall be responsible for all termination costs of its suppliers resulting from any such cancellation or suspension. The Buyer agrees that *Depot* shall not be liable to the Buyer as a result of such cancellation or suspension. *Depot* agrees to promptly notify the Buyer in the event performance of this contract is cancelled or superceded due to national interests.

Example 2

1. Suspension/Termination. The *Depot* reserves the right per Federal law to suspend or terminate all or part of its performance under this Agreement in the event that such performance is deemed to interfere, for any reason, with the *Depot's* military mission or work for the Department of Defense. The right to suspend or terminate performance hereunder will be in addition to the right reserved by the Government to suspend or terminate performance under this Agreement for unusual and compelling circumstances when the national interest of the United States so requires or to protect public health or safety. When the *Depot* determines that it is in the best interest of the Government, it reserves the right to terminate this Agreement without cause upon thirty (30) days written notice.

2. Mitigation. The *Depot* will attempt to mitigate any costs resulting from suspension or termination of services. However, the *Depot* cannot be held liable for any cost accruing to the Customer as a result of any cancellation or suspension.

Example 3

1. Termination of DSPA or IA. This DSPA shall become effective upon signatory approval and shall continue indefinitely thereafter unless both Parties consent in writing. An IA shall become effective when signed by the Depot Contracting Officer and shall continue in effect until officially closed by the Depot Contracting Officer. Neither Party has a unilateral right to terminate this DSPA or to unilaterally terminate an IA after the IA's signatory approval. In the event one Party desires such termination, whether due to changing program requirements, Depot reprioritization as necessary to fulfill its military mission, performance problems, or other reasons, that Party shall notify the other Party in writing. Unless the other Party mutually agrees in writing, the request to terminate shall be resolved under Article __, "Resolution of Disputes and Disagreements," herein.

2. Termination of DSO. The Contractor may initiate termination of a DSO, subject to written approval of the Project Officer, on the basis of changed program requirements or reprioritization based on insufficient funding to meet all program requirements. The Contractor may also recommend termination of a DSO, subject to the same limitations and approval, on the basis of a Depot failure to perform in accordance with this DSPA and the relevant IA and DSO. However,

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the Contractor must first notify the Depot in writing, with a copy to the Project Officer, and provide a reasonable time for the Depot to cite excusable causes (including, if applicable, identification of the Contractor's failures to perform) or to propose and implement adequate corrective action. The Parties' failure to agree on termination of a DSO or alternative course of action shall be resolved under Article __, "Resolution of Disputes and Disagreements," herein. In the event a DSO is terminated, the Depot shall be entitled, under the relevant DSO, to retain cost of or work delivered and accepted, and/or the cost of any work-in-process, and any costs directly caused by the termination.

Example 4

A. Cancel or Suspend

The *Depot* and the U.S. Government reserve the right to cancel or suspend all or part of its performance under this contract in the event that such performance is deemed by the Department of Defense, the Department of the ____, or other Defense Command or Agency to interfere, for any reason, with the performance of work by the *Depot* on other national defense manufacturing/re-manufacturing projects, assignments, or contractual obligations. The right to cancel or suspend performance hereunder shall be in addition to the right reserved by the U.S. Government to cancel or suspend performance under this contract for unusual and compelling circumstances when the national interest of the United States so requires. *Company* agrees that the *Depot* shall not become liable to *Company* as a result of such cancellation or suspension. However, *Depot* will return to *Company* any advanced incremental funding received but not expended. *Depot* agrees to promptly notify *Company* in the event the performance of this Agreement is canceled or suspended pursuant to this provision.

B. Termination

(a) This contract is entered into by the parties in furtherance of *Company*'s contract with the Government for the production of _____. Under this contractual relationship the *Depot* serves as a subcontractor to *Company*. By virtue of such authority and contractual relationships the parties hereby understand and agree that this subcontract may be terminated either in whole or in part as follows:

(1) Upon the Government's complete or partial termination of the prime contract with *Company*, this subcontract between *Company* and *Depot*, which is being entered into to facilitate a portion of such production, can be terminated commensurately;

(2) If either party hereto, *Company* or *Depot*, defaults in its performance under this agreement and fails to cure such default within a reasonable period of time depending on the nature of the underlying default, but in no case less than thirty (30) calendar days after receiving a written Notice of Termination from the party seeking to terminate the contract specifying the exact nature of the default, the corrective actions required to cure the default, and the milestone date(s) by which the default must be corrected if more than 30 calendar days could reasonably be required to correct the default; or

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(3) Upon the mutual agreement of the parties, *Company* and *Depot*.

(b) If this contract is terminated, either in whole or in part, under any of the provisions set forth in (a) above, the party seeking such termination shall send a written notice to the other party advising that party of the specific authority in paragraph (a) above being relied on to support the termination, whether the termination is in whole or in part, and if the latter, the exact scope of work to be continued under the contract, and the effective date of the termination if not upon receipt of the written notice.

(c) Upon receipt of such Notice of Termination, the terminated party shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts that may be due under the contract:

(1) Stop work as specified in the Notice of Termination,

(2) Place no further subcontracts or orders, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts or orders to the extent they relate to the work terminated.

(4) Assign and deliver to the terminating party all right, title, and interest of the terminated party under this contract in the manufactured items completed or in the process of completion at the time of termination.

(5) With such level of approval or ratification as may be required by the terminating party, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts or orders, the cost of which would be reimbursable in whole or in part, under this contract.

(6) Complete performance of the work not otherwise terminated.

(7) Take any other action that the terminating party may direct, or which may otherwise be necessary or appropriate, for the protection and preservation of the property related to this contract that is in the possession of the terminated party and which the Government has an interest.

(d) The terminated party shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended by the terminating party.

(e) Any termination inventory items not otherwise directed for disposition in accordance with paragraph (c)(4) above, shall be listed in writing by the terminated party, certified as to quantity and quality, and submitted to the terminating party along with the completed termination inventory schedules. The terminated party may request the terminating party to remove those items or enter into an agreement for their continued storage. The terminating party may verify the list upon removal of the inventory items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

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(f) After termination, the terminated party shall submit a final termination settlement proposal to the terminating party in the form and with the certifications prescribed by the terminating party. The terminated party shall submit the settlement proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the terminating party. If the terminated party fails to submit the settlement proposal within the time allowed, the terminating party may determine, on the basis of information available, the amount, if any, due the terminated party because of the termination and shall pay the amount determined.

(g) Subject to paragraph (f) above, the terminated party and the terminating party may agree on the whole or any part of the amount to be paid because of the termination. Such agreements shall be reduced to writing and made part of the contract by execution of a contract amendment. The terminating party shall promptly pay the terminated party the agreed upon amount.

(h) If the parties fail to reach agreement in whole or in part on the amount of such settlement costs resulting from the termination, the terminating party may determine, on the basis of the information available, the amount, if any, due the terminated party, and shall promptly pay that amount which shall include the following:

(1) The contract price for completed production services accepted by the terminating party and not previously paid for, adjusted for any savings and other charges.

(2) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to the manufactured articles or services paid or to be paid under subparagraph (h)(1) above.

(3) The cost of settling and paying termination settlement proposals under terminated subcontracts or orders that are properly chargeable to the terminated portion of the contract if not included in subparagraphs (h)(1) and (2) above.

(4) The reasonable cost of settlement of the work terminated, includes:

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts and orders (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the terminated party's termination settlement proposal may be included.

(i) Both parties agree to use FAR Part 31 cost principles as guidance in resolution of any termination settlement proposal, to include all costs claimed, agreed to, or determined under this clause.

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(j) The terminated party shall have the right to dispute and appeal any decision made by the terminating party under this clause. The parties agree to resolve disputes through the procedures addressed in the Disputes Resolution clause of this contract.

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STOP WORK ORDERS

Example 1

Buyer shall not cancel the contract except for good cause as defined by the Federal Acquisition Regulations, and upon 30 days written notice to *Depot*. In the event that the Buyer cancels this contract, the Buyer understands and agrees that it is liable for any and all terminations costs and fees which may be incurred by *Depot*, or which may result from such cancellation.

Example 2

1. Termination. The Customer may terminate this Agreement upon [insert number] days written notice to the *Depot*. The Customer will provide written Notice of Termination that shall include instructions for disposition of assets, equipment, material, and work in progress. If the Customer elects to terminate this Agreement, the Customer shall remain responsible for all costs incurred by the *Depot* in complying with the terms of the Notice of Termination. The Customer shall also be responsible to the *Depot* for all costs incurred in tearing down any facility and/or restoring the facility area to the “like condition” it was in before preparations were made to conduct these tasks, and for any other termination costs resulting directly from the termination.

2. Customer Property. In case of termination or cancellation of this Agreement, the Customer agrees to issue the *Depot* shipping instructions or other disposal instructions for any Customer-furnished property. The Customer will pay for all handling and shipping costs associated with Customer-furnished property. Customer property will only be stored by specific written addendum to this Agreement, signed by the designated authorized representatives.

3. Other Rights or Remedies. The rights and remedies of the *Depot* provided by this clause are in addition to any other rights and remedies provided by law or this Agreement.

Example 3

1. Conditions for Termination. Customer may terminate this Agreement in whole or in part only in the event that its prime contract is terminated; is otherwise modified in a way that makes the performance called for under this Agreement unnecessary; or for reasons consistent with applicable laws.

2. Notice of Termination. Customer will provide no less than ninety (90) days written Notice of Termination that will include instructions for disposition of Assets, property, material, and work in progress. If Customer receives advanced written notification of an impending termination, Customer will provide similar advanced written notice to *Depot*. Customer's property will only be stored by specific written addendum to this Agreement and signed by the designated authorized representatives.

3. Responsibilities. If Customer elects to terminate any portion of this Agreement, Customer will remain responsible for all costs incurred by *Depot* in complying with the terms of the Notice of Termination, including, but not limited to, all handling and shipping costs associated with

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Customer-furnished property. Customer and *Depot* will each be responsible for its obligation under any relevant facilities use memorandum of agreement.

4. Other Rights or Remedies. The rights and remedies of *Depot* provided by this clause are in addition to any other rights and remedies provided by law or this Agreement.

Example 4

(a) The Contractor may, as a result of a stop-work order issued under this Agreement, require the Depot to stop all or any part of the work called for by a DSO or PO, for a period of ninety (90) days after the stop-work order is delivered to the cognizant Depot partnering representative, or for any longer period to which the Parties may agree. The order will be specifically identified as a stop-work order issued pursuant to this article. Upon receipt of said stop-work order, the Depot will immediately comply with the terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by said order during the period of work stoppage. Within a period of ninety (90) days after a stop-work order is delivered to the Depot, or within any extension of that period to which the Parties will have agreed, the Contractor will either:

(1) Cancel the stop-work order; or

(2) Engage the Depot in termination discussions as provided under Article __, “Termination,” herein.

(b) If a stop-work order issued under this article is canceled or the period of the order or any extension thereto expires, the Depot will resume work. The Contractor will make an equitable adjustment in the delivery/performance schedule or DSO cost/price, or both, and the DSO will be modified by bilateral modification.

(c) If a stop-work order is not canceled and the work covered by the order is ultimately terminated, the Contractor will allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

Example 5

(a) *Company* may, at any time, by written order to the *Depot*, require the *Depot* to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the *Depot*, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the *Depot* shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the *Depot*, or within any extension of that period to which the parties shall have agreed *Company* shall either:

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as otherwise authorized by this contract.

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(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the *Depot* shall resume work if *Company* has otherwise complied with all of the terms and conditions of this contract and is considered current in performing its responsibilities. *Company* shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing accordingly, if:

(1) The stop-work order resulted in an increase in the time required for, or in the *Depot's* cost properly allocable to, the performance of any part of this contract; and

(2) The *Depot* asserts its right to the adjustment within 90 days after the end of the period of work stoppage; provided, that if the *Depot* has good and sufficient reasons it may assert its claims resulting from such work stoppages at anytime before the final completion of this contract.

(c) If a stop-work order is not canceled and *Company* under another provision of this contract terminates the work covered by the order, *Company* shall allow reasonable cost resulting from the stop-work order in arriving at the termination settlement between the parties.

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INDEMNIFICATION

Example 1

Buyer agrees to hold harmless and indemnify *Depot* from any claim for damages or injury to any person or property arising out of the article or service, except in any case of willful misconduct or gross negligence, or in the case of a claim by Buyer that damages or injury arose from the failure of the Government to comply with quality, schedule, or cost performance requirements in the contract to provide the articles or services.

Example 2

1. Indemnification for Damages and Injuries. The Customer agrees to hold harmless and indemnify the United States from any claim for damages or injury to any person or property arising out of the articles or services provided under this Agreement, except in any case of willful misconduct or gross negligence, or in the case of a claim by the Customer that damages or injury arose from the *Depot's* failure to comply with quality, schedule, or cost performance requirements in this Agreement. However, in no event may the foregoing language be construed to constitute a warranty. Any claim related to this Agreement must be subject to the Agreement's disputes resolution process before it may be asserted outside the ambit of the Agreement. The United States Government shall not be responsible for incidental or consequential damages. The United States Government shall not be responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure is caused by fire, flood, explosion, war, Acts of God or any other circumstances beyond the reasonable control of the United States.

2. Indemnification for Violation of Laws. Both parties recognize their responsibility to comply with all applicable state and Federal laws, executive orders, rules and regulations. Therefore, in addition to the provisions of paragraph 1., the Customer agrees to indemnify the *Depot* against any and all liability deriving from violation of any Federal, state or local laws, rules or regulations, to include environmental, occupational safety, and labor laws.

Example 3

1. General. The Buyer agrees to hold harmless and indemnify the Seller and the United States Government, except in a case of Government employee willful misconduct or gross negligence, from any claim for damages or injury to any person or property arising out of the sale of any article or service contracted for in this contract.

2. Environmental. The Buyer agrees to hold harmless and indemnify the Seller and the United States Government for the payment of fines or penalties imposed on the Seller by state or federal environmental agencies resulting from illegal or improper activities by the Buyer.

3. Government Immunity for Direct and Consequential Damages. The parties understand and agree that the Seller will not be responsible for or liable to the Buyer, or any third party, for any direct or consequential damages which may result to the Buyer, or any third party, from a breach of this contractual agreement by the Seller. The Buyer further agrees to indemnify the

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Seller for any such damage and/or injury claims that may be prosecuted against the Seller in accordance with the terms and conditions of above paragraphs.

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GOVERNING LAW

Example 1

Irrespective of the place of performance or signing of this Agreement, this Agreement will be governed by and interpreted only in accordance with Federal laws and regulations.

Example 2

This Agreement shall be governed by and construed solely in accordance with the terms and conditions herein, applicable Federal statutes, and the principles enunciated in the body of Federal Contract case law, regardless of the place of execution or performance of this Agreement.

Example 3

Irrespective of the place of performance or signing of this Agreement, this Agreement shall be governed and interpreted only in accordance with Federal law. FAR and DFARS flow down clauses from any prime contract that Buyer may hold for which these supplies or services may be needed do not apply to *Depot*, a public entity.

COMPLIANCE WITH LAWS

Example 1

Both parties recognize their responsibility to comply with all applicable federal, state and local laws, executive orders, rules and regulations applicable to a Federal installation during the performance of this Agreement.

Example 2

Both Parties recognize their responsibility to comply with all applicable state and Federal laws, executive orders, rules and regulations applicable to each Party. Customer will indemnify *Depot* against any and all liability deriving from Customer's violation of any Federal, state, or local laws, rules, or regulations.

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EXPORT CONTROLS

Example 1

This contract is subject to the Arms Export Control Act (22 USC § 2778). Buyer is responsible for securing any applicable export license or end user certificate. Buyer shall provide Seller with copies of the approved export license and/or end user certificate prior to commencement of the work by Seller. Buyer is responsible for applicable taxes.

Example 2

1. Compliance With Export Laws. Information exchanged under this Agreement may be subject to United States export control laws and regulations under the Arms Export Control Act (AECA) (22 USC § 2778). The Customer is solely responsible for complying with all applicable United States export control laws and regulations for information subject to the export control laws and regulations. Notwithstanding any other clause in this agreement, this agreement does not in any way authorize the export of any defense articles or defense services (including information or technical data) nor does it in any way authorize or approve an exemption to the export licensing requirements of the International Traffic in Arms Regulation (ITAR). If the customer or *Depot* wishes to export any deliverable provided under this agreement or derived from any deliverable (e.g. know how), then it must first obtain an export license.

2. Foreign Interest Disclosure. Policy implementing the AECA requires that the Department of the ____ be aware of any workload related to this Agreement that may implicate United States export control laws. If the Customer is performing work related to this Agreement for a foreign company, the Customer must certify that: (1) the United States' portion of the total work is of material significance; (2) the work with the foreign company involves meaningful contributions from both the Customer and foreign company; and, (3) the work does not merely represent a "pass through" of services from the United States to a foreign entity.

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ORDER OF PRECEDENCE

Example 1

The rights and obligations of the Parties to this Agreement shall be subject to and governed by this Agreement and other documents incorporated by reference. Any inconsistency shall be resolved by the following precedence:

- (1) The provisions of this Agreement.
- (2) Other documents incorporated by reference.

Example 2

The rights and obligations of the parties to this Agreement shall be subject to and governed by these Agreement clauses and the other documents incorporated by reference. Any inconsistency in the Agreement shall be resolved by giving precedence in the following order:

- (1) Commercial Services Agreement provisions including clauses;
- (2) The Task Description Document; and,
- (3) Other documents incorporated by reference.

Example 3

In the event of any conflict or inconsistency between the various clauses, terms, conditions and provisions of the Contract, Attachments and Annexes, the inconsistency shall be resolved by construing the Contract as a whole and in giving priority in the following order:

- (1) Statement of Work contained in this contract.
- (2) The terms and conditions of this ____ Working Capital Fund Direct Sales subcontracting agreement, to include all of the clauses and annexes attached hereto.

Example 4

In the event of any inconsistency between the Articles, Attachments, Specifications or Provisions, the following order of precedence will apply: (1) DSPA terms and conditions; (2) IA terms and conditions; (3) PO/DSO terms and conditions; (4) IA or PO/DSO documents/attachments.

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ENTIRE DOCUMENT

Example 1

This Agreement with all attachments constitutes the entire agreement of the Parties, and no oral or other representation shall be binding.

Example 2

This Agreement, with all attachments and documents incorporated by reference, constitutes the entire Agreement of the Parties and supersedes any and all prior agreements, understandings and communications between the Customer and the *Depot* related to the subject matter of this Agreement.

Example 3

This Agreement, including any IAs subsequently approved, constitutes the entire partnering agreement between the Parties. It governs the mutual responsibilities of the Parties relative to execution of the program, as well as the exchange of proprietary and confidential commercial information relating to the program. This Agreement supersedes and replaces any and all previous understandings, commitments or agreements, oral or written, related to the subject matter herein.

